

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON JUDICIARY**

**Call to Order:** By **CHAIRMAN LORENTS GROSFIELD**, on March 2, 1999  
at 9:04 A.M., in Room 325 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Lorents Grosfield, Chairman (R)  
Sen. Al Bishop, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Steve Doherty (D)  
Sen. Duane Grimes (R)  
Sen. Mike Halligan (D)  
Sen. Ric Holden (R)  
Sen. Reiny Jabs (R)  
Sen. Walter McNutt (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Judy Keintz, Committee Secretary  
Valencia Lane, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 38, HB 104, HB 233,  
2/27/1999  
Executive Action: HB 38, HB 41, HB 104

**HEARING ON HB 38**

**Sponsor:** REP. RAY PECK, HD 91, Havre

**Proponents:** Greg Petesch, Code Commissioner

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. RAY PECK, HD 91, Havre,** introduced HB 38, the Code Commissioner Bill, which is a requirement by statute, Section 1-11-200. He remarked that it is the Code Commissioner's responsibility to prepare and submit to the Legislative Services Division a report indicating the Commissioner's recommendation for legislation that will eliminate archaic or outdated laws, eliminate obsolete or redundant wording of laws, eliminate duplication in laws and any laws repealed directly or by implication and clarify existing laws.

**Proponents' Testimony:**

**Greg Petesch, Code Commissioner,** explained that they tried to eliminate any need for amendment or controversy. Over the course of the interim as problems with statutes are identified, they draft legislation and submit the same to each affected agency for their review. For statutes that deal with cities and towns or counties, the draft legislation is submitted to the groups that represent those entities. General criminal provisions are submitted to the Department of Justice.

Unused definitions are eliminated from the code. Erroneous references are corrected and clarified. The paper version of the Y2K problem has been addressed in this bill. Certain forms are required by law and have a 19\_\_ blank date. These are all being changed to 20\_\_.

There are several references to the North American Industry Classification System Manual which are being replaced to the 1987 Standard Industrial Classification Manual. These provisions are in tax sections and in workers' compensation classification sections. For the section that is changed in the workers' compensation State Fund law, there is a delayed effective date to allow the State Fund to change their policy language to comply with the new manual classification for occupations.

One of the provisions in local government that allowed new counties to be created legislatively is being repealed. The 1972 Constitution states that the counties are those in effect when the Constitution was adopted and that counties can only be changed or created by an election in each district.

The new coal production tax incentive is also being repealed and has expired by its own term and is simply being eliminated from the books.

Retroactively, two amendments are being applied in this bill. One of the amendments deals with the oil production tax credit. The internal references were incorrect. This is necessary so that the tax credit can be properly calculated under the proper subsection references.

**Opponents' Testimony:** None

***{Tape : 1; Side : A; Approx. Time Counter : 9.10}***

**Questions from Committee Members and Responses:**

None.

**Closing by Sponsor:**

**REP. PECK** remarked that **Mr. Petesch** has always prepared a very good code commissioner bill. He added that the committee should have no difficulty approving the bill.

**HEARING ON HB 104**

**Sponsor:** REP. TONI HAGENER, HD 90, Havre

**Proponents:** Jane Jelinski, Montana Association of Counties  
Pat Chenovick, Supreme Court Administrator  
Mary Phippen, Montana Association of Clerks of  
District Court

**Opponents:** Jeff Koch, Montana Collectors Association

**Opening Statement by Sponsor:**

**REP. TONI HAGENER, HD 90, Havre,** introduced HB 104 which parallel's HB 41, which extends the surcharge for court technology. She emphasized that the surcharge is essential to bring all of Montana's courts into the electronic age. Counties cannot afford to accomplish this on their own.

***{Tape : 1; Side : A; Approx. Time Counter : 9.14}***

**Proponents' Testimony:**

**Jane Jelinski, Montana Association of Counties,** rose in support of HB 104.

**Pat Chenovick, Supreme Court Administrator,** urged concurrence in this bill.

**Mary Phippen, Montana Association of Clerks of District Court,** relayed that this bill will assure continued maintenance of the current systems as well as updates in software and hardware as improvements occur.

**Opponents' Testimony:**

**Jeff Koch, Montana Collectors Association,** pointed out that this bill has a very significant difference from HB 41 in that the termination date is open ended. At \$1 million a year, how long do we need to fund this program to properly assure that the courts have all the necessary equipment needed? Those appearing on civil matters are not receiving any benefit from the equipment. He asked that this surcharge be excluded from civil actions. He added that there was no notification of this bill being taken off the table in the House. It was taken off the table without a hearing.

**Questions from Committee Members and Responses:**

**CHAIRMAN GROSFIELD** explained that this bill was prepared together with HB 41, which was tabled in this committee several weeks ago. This committee requested that HB 104 be sent over from the House. In the meantime, the Supreme Court has ruled CI-75 to be unconstitutional. **Greg Petesch** has met with leadership of both Houses and there has been a determination that any bills which have CI-75 language need to have this language amended out of the bills before they proceed. Both HB 104 and HB 41 have CI-75 language. House Bill 104 eliminates the sunset provision. House Bill 41 has a sunset of June 30, 2003.

He questioned which bill the Supreme Court would like to see move forward. **Mr. Chenovick** remarked that HB 104 was drafted without a termination date. It is his opinion that when dealing with developments in the technology field, none of us will see an end to developments for the operation of computers. Manufacturers of software are continually upgrading software and decreasing their support for older versions of that software. The Supreme Court should come back to the legislature and explain what has been accomplished with the funds provided.

**CHAIRMAN GROSFIELD** explained that committees in the legislature table bills and remove the same from the table without notice during executive action. There are no hearing requirements. This committee tabled HB 41 due to concerns raised in the hearing having to do with CI-75 and the fact that the committee was concerned that some of the surcharges were not covered in the explicit language of CI-75, especially those dealing with civil matters.

**Mr. Koch** pointed out that all the testimony maintained that this process was used for tracking criminal cases. The surcharges assessed to the criminal side are fair. However, the surcharges assessed to the civil side are not because there is no benefit gained.

**SEN. HALLIGAN** questioned whether the charges incurred could be passed onto the people the collection agency was representing.

**Mr. Koch** affirmed that the charges were allowed to be passed on but not all cases resulted in payment. Those entities that filed for multiple clients ended up spending a large amount on surcharges and were receiving no benefit.

**CHAIRMAN GROSFIELD** questioned whether there were benefits for the civil side. **Mr. Chenovick** maintained that a litigant files a document asking the court for a remedy or solution to that particular problem. On the civil side, the clerks or employees of the court perform activities, whether manually or by using the computer system, the same as in a criminal case. He added that a user should be required to help support that system.

**Closing by Sponsor:**

**REP. HAGENER** claimed that if the civil side was not assessed surcharges, the process would be slowed down. It is important to keep up with today's technology. Without the sunset, the legislature would have to approve the appropriations for the operation.

**{Tape : 1; Side : A; Approx. Time Counter : 9.34}**

**EXECUTIVE ACTION ON HB 38**

**Motion/Vote:** **SEN. HALLIGAN** moved that **HB 38 BE CONCURRED IN.**

**Motion carried unanimously - 8-0.** **SEN. HALLIGAN** will carry the bill on the Senate Floor.

**SEN. DOHERTY** joined the meeting.

**EXECUTIVE ACTION ON HB 41**

**Valencia Lane** explained that **Greg Petesch, Legislative Services Division**, had met with the leadership from both Houses and the agreement is that the bills dealing with CI-75 issues should be edited to assist in codification and clarification for future legislative research. All references to CI-75 and language regarding voidness and submission to the electorate for a vote should be stricken from the bills. The bills would need to be returned to the House of origin. All the CI-75 "spinoff" bills,

which only address submission to the electorate, would be tabled in committee or would die in committee.

**Motion/Vote:** SEN. HALLIGAN moved that HB 41 BE REMOVED FROM THE TABLE. The motion carried unanimously - 9-0.

**Motion:** SEN. HALLIGAN moved that HB 41 BE AMENDED BY STRIKING NEW SECTIONS 2 AND 3. CORRESPONDING TITLE CHANGES WOULD ALSO BE NECESSARY. THE EFFECTIVE DATE WOULD BE UPON PASSAGE AND APPROVAL.

**Discussion:**

SEN. BARTLETT added that the amendment also needed to strike "subject to Section 3," in the effective section.

**Vote:** Motion carried unanimously - 9-0.

**Motion:** SEN. HALLIGAN moved that HB 41 BE CONCURRED IN AS AMENDED.

**Discussion:**

SEN. BARTLETT questioned whether the funds would be a statutory appropriation. Mr. Chenovick explained that the funds went into a State Special Revenue Fund and were involved in the HB 2 process. This would not involve a statutory appropriation.

SEN. GRIMES asked for more clarification on how this would apply to civil matters. SEN. HALLIGAN maintained that civil litigants would benefit by tracking of cases in the court system. Mary Phippen, Montana Association of Clerks of the District Court, clarified that the District Court Case Management Program involved civil filings to include indexing, calendaring, tracking of motions, docketing judgments, and , therefore, would pertain to all aspects of every type of case filed in the district courts. This benefits both civil and criminal tracking.

**Vote:** Motion carried unanimously -9-0. SEN. HALLIGAN will carry the bill on the Senate Floor.

**EXECUTIVE ACTION ON HB 104**

**Motion/Vote:** SEN. HALLIGAN moved that HB 104 BE TABLED. Motion carried unanimously -9-0.

*{Tape : 1; Side : B; Approx. Time Counter : 10.02}*

**HEARING ON HB 233**

**Sponsor:** REP. TRUDI SCHMIDT, HD 42, Great Falls

**Proponents:** David Gliko, Great Falls City Attorney  
Alec Hanson, League of Cities and Towns  
Jani McCall, City of Billings  
SEN. JOHN BOHLINGER, SD 7, Billings

**Opponents:** None

**Opening Statement by Sponsor:**

REP. TRUDI SCHMIDT, HD 42, Great Falls, introduced HB 233 which is an act allowing municipal and city courts to assign the collection of fines to private persons or entities. Currently the statutes provide for the collection of fines exclusively by the courts and no other option is available for collection. With the tremendous caseload occurring in the misdemeanor jurisdictions of the city and municipal courts throughout the state and the limited staff to support courts, judges are not equipped and are unable to pursue collection of the massive number of delinquent fines in their dockets. Proposed amending legislation would permit a city or municipal court to contract with a third party that is experienced and equipped for the collection of such delinquent fines. The amendments would only give the city and municipal courts the option to use such collection agencies where and when deemed necessary.

***{Tape : 1; Side : B; Approx. Time Counter : 10.06}***

**Proponents' Testimony:**

David Gliko, Great Falls City Attorney, remarked that the purpose of the bill was to insure that the judicial system actually administers justice to all. Everyone would pay fines and not just the citizen who pays his or her fines up front.

In 1998 there were 22,661 new tickets processed by the city court in Great Falls. Total receipts were \$969,533. This includes 10,000 or more payment plans as the result of matching the sentencing to the economic conditions of the defendants. The number of delinquencies are unknown but may be up to as much as \$1 million. There are only three people working in the court receipts office, which provides too few employees to keep up with the delinquent accounts. A rotating letter of the alphabet is used to randomly check the defendants, resulting in approximately 30 contempt warrants each month to enforce delinquent collection. The police department does not have resources sufficient to

immediately serve the warrants. On December 23, 1998, the outstanding warrants totaled 5,007. These warrants are served by one warrant officer. Actual service of the warrants occurs when a defendant is picked up on some other charge and a records' check is made. The defendant is processed through the court system and once again further clogs up the court records and receipts. The court system is not equipped to handle this volume.

A tool is needed to pursue timely collection that is efficient and effective. In 1996, the Billings City Court was using a collection agency and achieving good results. The Attorney General's Office advised that the judge could not delegate authority for such collection under the statutes and, in fact, if she did, judicial immunity was lost by the delegation. The use of collection agency services was immediately suspended.

This bill would provide the option of allowing the court to authorize delegation for collection of these accounts. The Attorney General's Office has reviewed and supports this legislation.

Collection agencies have local databases. They know the people they can collect from as well as those they simply cannot collect from. It is much easier for them to determine which of these accounts can be collected upon and which are simply a waste of time. They have the incentive to collect because they are compensated by a percentage of the amount collected. For the most difficult cases, they have retained attorneys.

The City of Great Falls would implement this legislation by asking for proposals from collection agencies. Some of the criteria would be that the agency be fully bonded, be flexible enough to coordinate their efforts with the court, have the most favorable percentage of retainer, and be the best equipped in terms of manpower, location, etc. It would take a special effort by the city to determine which accounts to turn over to the agency. Considerations would include the time of delinquency, amount sufficient to warrant referral, and elimination of known uncollectible accounts. The city court judge has told him that she would not turn over the current accounts to a collection agency. This would include accounts recently placed on payment plans and those who have kept up their payments.

This tool would be optional and not mandatory. It would ensure the collection of these fines.

***{Tape : 1; Side : B; Approx. Time Counter : 10.15}***



**Alec Hanson, League of Cities and Towns**, related that courts and police departments simply do not have adequate staff to handle collection of fines. He added that the Billings program was very effective. This legislation would provide for similar effective programs.

**Jani McCall, City of Billings**, conveyed that they have used a private collection agency in the past, which worked very well. The language provides choice to cities, towns, and municipalities for collection. They found this process to be very cost efficient and the level of expertise is much higher in terms of collecting.

The process started in August of 1990. The city used an RFP and selected a contract entity through an on-site selection process. In 1996, Mark Murphy prepared an Attorney General's Opinion which held that the judge could not delegate this authority and the immunity is lost upon delegation of that authority to privatization. This also raised the issue of liability. After receiving this information, the city stopped using a collection agency.

**SEN. JOHN BOHLINGER, SD 7, Billings**, remarked that the present system involves a non-efficient use of manpower in sending our police force out to collect fines. There are greater interest of public security that our police department should be addressing. Great Falls has approximately \$1 million of past due accounts that they have not been able to collect. This is a significant amount of money.

**Opponents' Testimony:** None.

***{Tape : 1; Side : B; Approx. Time Counter : 10.23}***

**Questions from Committee Members and Responses:**

**SEN. HOLDEN** remarked that he understood it was the city attorney's responsibility to collect fines. **Mr. Gliko** stated that in his jurisdiction, the court viewed this as their area of jurisdiction. The city attorney, as an officer of the court, stands in support of the court. If the court issues a warrant to bring someone in who is delinquent, the city attorney's office is available to represent the state's interests in enforcing the court's contempt authority. Once a defendant has been convicted and fined, this is the end of the prosecutor's official duties.

**SEN. HOLDEN** asked why the court system did not hire another employee to aggressively pursue these warrants. This would increase revenues and be less expensive than giving a cut of the

receipts to some outside firm. **Mr. Gliko** explained that that is currently an option and would continue to be so under this legislation. He added that the means of working within the judicial system involves identifying delinquent accounts, asking the court to issue a warrant for the defendants, adding the warrant to the list of several thousand warrants and is giving the list to the police department for service. This process is brought back to the municipal judge who has the option of listening to the person's story and determining whether this person is able to pay. This would clog up an already overburdened system. Collection agencies have the incentive to pursue these warrants.

**SEN. HOLDEN** suggested an aggressive plan placed in the newspaper that the city would start placing these persons in jail. **Mr. Gliko** responded that they have published parking fines. First they threaten to publish the names and then they actually get around to doing so. There is a cap on the jail population. It is difficult to find accommodations for more serious offenders. This involves over 22,000 new citations for the City of Great Falls annually.

**SEN. DOHERTY** understood that the fines which are currently levied in the court would be a judgment. He questioned why the county attorney's office could not execute on the judgment in the same manner as a private collection agency. **Mr. Gliko** explained that city courts are very jealous of their authority.

**SEN. DOHERTY** remarked that this would allow a civil fine to be assigned to a private entity who will then sue in their own name. He questioned whether there was any other instance in Montana law where a fine levied by a court could be assigned to a private, profit-making entity in an attempt to collect that fine. Basically, the state would be giving up its cause of action. **Mr. Gliko** was not aware of the same.

**SEN. DOHERTY** questioned why the city court would be more inclined to hand over their power to a private corporation. **Mr. Gliko** stated that there is the precedent of the City of Billings' experience which worked very well.

**SEN. DOHERTY** commented that after a private corporation received a judgment, the fine would turn into a judgment that is not satisfied and would be added to the individual's credit report. **Mr. Gliko** affirmed and added that it is not contemplated that all accounts would be sued upon by the collection agency. They are not suggesting a debtor prison system.

**SEN. HALLIGAN** asked **Jeff Koch, Montana Collectors Association**, how this might work for his business. **Mr. Koch** responded that this bill is not mandatory and involves a choice. In most other states, this situation is already occurring. Collection agencies have persons trained to handle collection work. They use dialing technology and other systems to economically handle the large number of cases. Most credit reporting agencies do not report judgments from the city or municipal courts due to the small amounts involved.

*{Tape : 2; Side : A; Approx. Time Counter : 10.38}*

**SEN. HALLIGAN** asked if a lawsuit would be filed to receive a second judgment. **Mr. Koch** explained that they would use the original judgment.

**SEN. HALLIGAN** asked if it was the intent that the collection agency fees would be taken out of the collected fine. **Mr. Koch** stated that he could not speak for the persons who drafted the bill. He added that there is a federal provision under the Fair Debt Collection Practices Act that would forbid a collection agency from adding a fee to an account unless it is called for in the contract that underlies the account or if it is allowed by statute. Barring statutory language, the collection agency would not be able to add an additional fee.

**SEN. HALLIGAN** asked what the average fee might be for collection agencies. **Mr. Koch** stated that this would vary but collection fees are typically from 25% to 33% of the amount collected.

**REP. SCHMIDT** explained that the intent was not to give statutory authority to the collection agencies to go above and beyond the fine to collect their fees.

**SEN. HALLIGAN** raised a concern that counties were not involved in this process.

**Closing by Sponsor:**

**REP. SCHMIDT** closed on HB 233 and added that **SEN. BOHLINGER** would carry the bill on the Senate Floor if it passed out of this Committee.

Additional handouts - Written testimony in support of HB 233, City of Billings Municipal Court, **EXHIBIT(jus47a01)**, and City of Billings, Department of Finance and Administrative Services, **EXHIBIT(jus47a02)**.

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**ADJOURNMENT**

Adjournment: 10:42 A.M.

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SEN. LORENTS GROSFIELD, Chairman

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JUDY KEINTZ, Secretary

LG/JK

**EXHIBIT (jus47aad)**